IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

M/s. Jai Shankar Harish Chand, Kedal Ganj

Versus

Rajendra Kumar & Ors.

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S.B. Civil First Appeal No. 68/1984

Date of order :: August 29, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.K. Mathur for the appellant
Mr. Mohammad Iqbal for the respondents

BY THE COURT:

1. This appeal is directed against the judgment and order dated 17.01.1984 passed by the learned ADJ No. 2, Alwar, by which the Civil Suit No. 100/81 (5/82) was dismissed by the learned trial court.

2. The suit was filed under Order 37 CPC for recovery of Rs. 10,000/-, which were said to have been advanced by the plaintiff-

appellant on 11.11.1978 on a pronote. Ex.1 Pronote and Ex.2 Receipt were produced before the trial court. The suit was filed for recovery of Rs. 15,395/- including the interest for three years at the rate of Rs. 1.50 per Rs. 100 on monthly basis.

3. The learned trial court framed three issues, namely,

(i) Whether late Shri Shivcharan, father of the defendant No. 1 to 4, had borrowed a sum of Rs. 10,000/- on interest at the rate of Rs. 1.50 per Rs. 100 per month and executed the pronote and receipt.

(ii) Whether the defendants being legal heirs of the late Shri Shivcharan were liable to repay the said loan.

(iii) Relief.

4. The learned trial curt recorded the evidence in the form of statements of P.W. 1 Lala Ram, P.W.2 Prabhu Dayal S/o Ramji Lal and P.W.3 Prabhu Dayal S/o Bhurji Mal. As against this, defendants produced their witnesses D.W.1Rajendra Kumar, D.W.2 Ramavatar and D.W.3 Rohitash Kumar.

5. Learned trial court while deciding the issue No. 2 on appreciation of the evidence found that the plaintiff had failed to prove the pronote as there were cuttings in the same and the witnesses produced by the plaintiff were interested witnesses. The trial court also found that there was difference in the ink of pen used for signing of the said pronote and receipt and the averments made in the same. The plaintiffs was having regular business transactions with the defendants but had failed to produce the books of accounts in which the said entry of advance could be proved. The defence witnesses categorically denied the averments made in the plaint that late Shri Shivcharan had taken any loan of Rs. 10,000/- from the plaintiff. They said in their evidence that the signatures on the pronote and receipt were forged. The trial court also found that both the witnesses of the Ex.1 Pronote and Ex.2 Receipt were residents of Kishangarh, whereas the alleged transaction of loan was said to have taken place at Alwar and there was no reasonable cause shown by the plaintiff for the same. Accordingly, the trial court did not treat the said documents Pronote Ex.1 and Receipt Ex.2 as proved and hence, it dismissed the present money suit. Aggrieved by the same, the plaintiff is in appeal before this court.

6. I have heard learned counsel for the parties and perused the

record.

7. This court is of the opinion that the learned trial court has rightly held as the pronote Ex.1 and receipt Ex.2 have not been proved by the plaintiff. The contention of the learned counsel for the appellant that once the pronote is produced by the plaintiff, the burden shifts on the defendants to rebut the presumption of loan, is misconceived. It is for the plaintiff to prove his case. If the basic documents itself, namely, the pronote and the receipt, are found to be forged and fabricated, no transaction of loan can be said to have taken place. The attending circumstances which the trial court has taken into consideration is that there were regular business transactions between the parties, that the witnesses were interested and the witnesses who attested the said pronote were from a different place, were sufficient in the opinion of this court to hold that the plaintiff had failed to prove these two important evidences in his support. The further finding of the trial court that the writing on the pronote and the signatures were in different ink does also cast a serious doubt on the veracity of the said documents.

8. Thus, the trial court has rightly decided the issue No. 1 against the plaintiff and its findings are not required to be interfered with by

this court in the present appeal. The decision of the issue No. 2 is consequential in nature and accordingly it is held that the defendants were not liable to pay the said alleged amount of loan taken by late Shri Shivcharan.

9. Consequently, this appeal is found to be devoid of any force and the same is accordingly dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 3